IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11119 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GODHRA CITY CO-OP BANK LTD
Versus
MITUL HASMUKHLAL SONI & OTHERS

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Appearance :
MR SUNIL S JOSHI for Petitioner.
MR ARPIT A KAPADIA for Respondents No. 1, 4
MR YM THAKKAR for Respondents No. 2 - 3.
MR TUSHAR MEHTA for KETAN D SHAH for Respondent No. 5

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 18/04/2007

ORAL JUDGMENT

Rule. Mr. Arpit J. Kapadia waives service of notice on behalf of respondents No. 1 and 4. Mr. Y.M. Thakkar waives service of rule on behalf of respondents No. 2 and 3, and Mr. Ketan D Shah waives service of rule on behalf of respondent No.5. With the consent of the parties, this matter is taken up for final disposal today.

This petition has been filed by the petitioner Bank seeking relief against the judgment and order dated 28.10.2005 made by the Gujarat State Revenue Tribunal in Review Application No. 170 of 2005 whereunder the order dated 06.05.2005 made by the Board of Nominees below Exh. 5 in Lavad Suit No. 627 of 2004 came to be confirmed.

The undisputed facts are that the petitioner Bank advanced loan to respondent No.1 herein [hereinafter referred to as the borrower], and at the time of advancing such loan, property bearing survey No. 18/360/1 was furnished as co-lateral security. The relationship between respondent No. 1 and respondent No.4 is that of husband and wife. Respondents No. 2 and 3 are the guarantors qua the said financial transaction.

It is also an accepted fact that respondent No.4, independent of the aforesaid financial transaction, availed of another financial facility from the petitioner Bank and for this purpose, the very same property was mortgaged with the petitioner Bank by respondent No.4. An agreement to sell the property was entered into by respondent No.4 in favour of respondent No.5 and pursuant thereto, the outstanding amount, according to respondent No.5, in the account of respondent No.4, was paid off by respondent No.5. The property in question is

thereafter stated to have been purchased by respondent No.5.

In the Lavad Suit filed by the petitioner-Bank against respondent No.1 herein, by way of interim relief, attachment of the property in question was sought on the basis of the said property having been placed as a co-lateral security at the point of time when the borrower availed of the financial facility. The Board of Nominees, while deciding the application for interim relief, came to the conclusion that as the mortgage stood discharged on repayment, respondent No.4 being an independent owner of the property, could not be injuncted from dealing with the property in question. Further more, it was found that the properties of the Guarantors were sufficient to cover the outstanding dues of the borrower and hence it was not necessary to attach the property in question. This order came to be confirmed by the Tribunal.

Heard learned advocate Mr. Sunil S Joshi appearing on behalf of the petitioner Bank. After reiterating the aforesaid facts, it was submitted that both the Board of Nominees and the Tribunal have failed to appreciate that the property in question was a co-lateral security vis-a-vis the financial transaction between the Bank and the borrower and merely because a different transaction between the Bank and the wife of the borrower had been cleared off, the property could not be released in favour of respondent No.5 during the pendency of the proceedings.

Mr. Arpit Kapadia, learned advocate appearing on

behalf of the borrower and respondent No.4, the property owner, has supported the stand of the Bank and accepted that the property in question had been offered as a co-lateral security in relation to the financial transaction between the Bank and the borrower.

Mr. Y.M. Thakkar, learned advocate appearing on behalf of the guarantors has also supported the submissions made on behalf of the petitioner Bank.

Mr. Ketan D Shah, learned advocate appearing on behalf of respondent No.5 submitted that he was a bonafide purchaser even prior to the filing of the suit, and hence the property in question could not have been put under attachment as rightly held by the Board of Nominees and the Tribunal. He, however, accepted the fact that the suit was pending and respondent No.5 had already been impleaded in the said proceedings.

In the aforesaid factual matrix, without entering into any discussion on merits of the respective contentions of the parties, it would be in the interest of justice, if both the impugned orders are quashed and set aside and the interim order modified to prevent miscarriage of justice during the pendency of the proceedings.

In the circumstances, the order dated 06.05.2005 made by the Board of Nominees below application exh. 5 in Lavad Suit No. 627 of 2004 and the order dated 28.10.2005 made by the Tribunal in Revision Application No. 170 of 2005 are quashed and set aside. It is stated on behalf of respondent No.4 that the property is in possession of

respondent No.4. This statement is disputed by learned advocate appearing on behalf of respondent No.5 who claims that the property is in possession of respondent No.5. In the circumstances, whosoever is in possession of the property shall continue to remain in possession of the property subject to both respondent No.4 and respondent No.5 filing an undertaking before the Board of Nominees that possession shall not be parted with and the property shall not be alienated in any manner whatsoever during the pendency of the suit proceedings and shall remain in possession subject to the outcome of the suit.

The petition is accordingly allowed in the aforesaid terms to the aforesaid extent. Rule made absolute accordingly. No order as to costs.

[D.A.MEHTA, J.]

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